

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Misc. No. 7922-C of 2001
R.S.A. No. 3940 of 2001 (O&M)

Date of decision: 29.1.2008

Amrik Singh

--- Appellant

Versus

Kanwarjit Singh and others

--- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. R.C. Dogra, Senior Advocate with
Mr. S.K. Bawa, Advocate for the appellant.

Mr. Satinder Khanna, Advocate for
the respondents.

AJAY KUMAR MITTAL, J.

This order will govern the disposal of two appeals, namely, Regular Second Appeal Nos. 3940 of 2001 and 2408 of 2006, both at the instance of an unsuccessful plaintiff who having utterly failed, but not dismayed, to get a decree for partition of the suit land and decree for permanent injunction, before the trial court as well as the first appellate court, has approached this Court by means of instant appeals.

The plaintiff brought a suit before the trial court, for partition pleading, inter alia, that he and the defendants were co-owners in

possession of the suit property in which he has got 17/24th share whereas the defendants had remaining 7/24th share in equal proportions.

Suit was contested by defendant no.1 alone. Disclosing a quite different version, it was stated that the suit property was exclusively owned and possessed by Naranjan Singh and Surinder Pal Singh who had entered into an agreement to sell the same in his favour. Upon their failure to perform their part of the agreement, he had to get the sale deed registered in his favour through the intervention of the court by filing a suit for possession by specific performance. It was vehemently stated that the plaintiff had no right or title in the suit property and even if he was able to prove any, the same stood extinguished by efflux of time. It was also stated that a wrong site plan had been filed with the suit inasmuch as the boundaries given therein do not tally with the suit property.

The suit for partition was dismissed vide judgment and decree dated 19.5.1997. The dismissal of plaintiff's claim by the trial court came in the light of following observations:

“In this case, the plaintiff has not given the area of property in dispute. The plaintiff has claimed ownership on the basis of sale deed Ex. P-1 to P-7. But these sale deeds have not been mentioned in the plaint. Therefore, the evidence led by the plaintiff regarding these sale deeds, is beyond the pleadings. The plaintiff further failed to mention as to who was the previously owner of the suit property and how he

became co-owner in the same. Further more, the plaintiff has not led any evidence to co-relating these sale deeds with the suit property. It was necessary for the plaintiff to mention these sale deeds in his pleadings. Amrik Singh plaintiff has admitted in his cross-examination as PW-1 that the boundaries are given in the plaint as per his sale deeds Ex. P-1 to P-7 which pertain to the year 1938 whereas Shiv Singh PW-3 has admitted the boundaries as mentioned by defendant No.1 in his written statement. Therefore, the site plan produced by the plaintiff is incorrect. The defendant No.1 has based his claim on the basis of sale deed dated 10.1.1992, Exhibit D-1. This sale deed was executed in pursuance of a decree for specific performance of contract which was decided in favour of defendant No.1.”

The appeal preferred by the appellant before the first appellate court was also dismissed vide judgment and decree dated 5.5.2000.

This is how; the plaintiff-appellant filed the instant appeal being R.S.A. No. 3940 of 2001.

It deserves a specific mention here that before the filing of the suit for partition on 17.7.1992, the plaintiff had also filed a suit for permanent injunction just a month earlier thereto i.e. on 13.6.1992 against Kanwarjit Singh, who is defendant No.1 in the suit for partition. A decree for permanent injunction was prayed in the said suit restraining Kanwarjit Singh from making any sort of construction or

changing the nature in any manner whatsoever of the suit property shown as red in the site plan attached with the plaint of the said suit, illegally and forcibly except in due course of law or except getting it partitioned.

The suit for permanent injunction also met with failure in view of the findings recorded by the trial court that the plaintiff had failed to prove on record that he was a co-sharer in the suit property. In that suit as well, the plaintiff had staked his claim for obtaining a restraint order against the defendant therein, by referring the suit property as depicted in the site plan Exhibit P-8 and as per boundaries mentioned in sale deeds Exhibits P-1 to P-7. The trial court in that suit also returned a finding that the site plan on the strength of which the injunction was prayed for by the plaintiff, had been prepared by the plaintiff himself as per his own whims and wishes and the same was not correct according to the exact position at the spot. The plaintiff therein was held to have no locus standi to file the suit for permanent injunction. It was primarily on these premises, the suit was dismissed.

The plaintiff did not succeed even before the first appellate court and consequently has filed RSA No. 2408 of 2006.

It is because of the aforesaid background that both these appeals are being disposed of by a common order.

I have heard learned counsel for the parties and have gone through the impugned judgments. It is evident from the record that the findings recorded by the courts below are pure findings of fact based on appreciation of evidence. Learned counsel appearing for the appellant

did argue that the findings recorded by the courts below are wrong and illegal and deserve to be set aside, but he could not show to this Court any error of law or perversity therein so as to persuade this Court to interfere therewith. Even otherwise, a perusal of the judgments of the courts below shows that the plaintiff had not been able to co-relate the suit property with the property of which he had claimed as co-owner in possession with the defendants. Learned first appellate court upon consideration of the controversy and the submissions made in that behalf categorically held that the plaintiff had failed to prove that he was a co-sharer in the suit property though the defendant had been able to establish on record that he had purchased the property in dispute from the previous owner by virtue of sale deed, Exhibit D-1 which was executed pursuant to a decree for possession by way of specific performance having been passed by the civil court. On the basis of this, it was further held that the plaintiff had no locus standi to file the present suit and he was also not entitled to a decree for partition. Nothing is shown by the counsel for the appellant to enable this Court to interfere with the concurrent findings of fact recorded by the courts below. No question of law much less a substantial question of law is shown to have arisen for the consideration of this Court in second appeal.

In view of the above, there is no merit in the appeals and the same are accordingly dismissed.

Since the appeals have been heard and dismissed on merits, no orders are being passed in the applications for condonation

of delay in filing the appeal. It, however, deserves to be mentioned otherwise that in RSA No. 3940 of 2001, the delay is stated to be of 53 days whereas in other appeal i.e. RSA No. 2408 of 2006, there is an unprecedented delay of 2083 days in filing the appeal before this Court.

Apart from the above, an important fact also deserves to be noticed here which is, otherwise, not at all concerned with the controversy involved in the instant case and is being noticed in the order just to highlight the conduct of the appellant. During the course of hearing, learned counsel appearing for the respondent pointed out that in the certified copy of the judgment dated 5.5.2000 of the Additional District Judge, Jalandhar; forgery had been committed, inasmuch as the date of completion/ preparation of the certified copy has been changed from 17.5.2000 to 30.6.2000. The matter was got enquired from the District Judge, Jalandhar who vide his office letter dated 1.4.2003, which is available on record in original, confirmed that the certified copy of the impugned judgment of the Additional District Judge, Jalandhar was prepared and attested by the officer authorized in that behalf, on 17.5.2000. The District and Sessions Judge, Jalandhar opined that the forgery had been committed by changing the date from 17.5.2000 to 30.6.2000 by the party concerned, meaning thereby, it was so done at the instance of the appellant, with an oblique motive to have advantage of period of limitation. This Court vide order dated 10.1.2006 had ordered that a notice be issued to the appellant through his counsel as to why criminal proceedings be not initiated against him. The record does not indicate that any follow-up action had

been taken thereafter in that behalf. In this view of the matter, it is directed that further proceedings in terms of order dated 10.1.2006, if not already taken, be initiated against the appellant in accordance with law, separately.

January 29, 2008
RKMALIK

(AJAY KUMAR MITTAL)
JUDGE